

FILED
U.S. DISTRICT COURT

2012 JUL 18 A 10:36
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

DAVID WEBB,
Plaintiff,

vs.

WEBER COUNTY, CRAIG DEARDEN,
JAN ZOGMAISTER, KERRY GIBSON,
DEE SMITH, CAITLIN GOCKNOUR, NEIL
GARNER, AMY WICKS, BART BLAIR,
BRANDON STEPHENSON, DOUG
STEPHENS, SUSIE VON HOOSER,
TIMOTHY SCOTT, K. MURRAY, TERRY
THOMPSON, KEVIN MCCLEOD, KEVIN
BURTON, R. WEST, R. JOHNSON, R.
GATES, A. FLATT,
JON GREINER, JAMES RETALLICK, AND
TWO JOHN DOES,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 1:11-cv-00128

Judge Dee Benson

Before the Court is the Report and Recommendation issued by United States Magistrate Judge Samuel Alba on April 25, 2012, recommending: (1) Plaintiff David Webb's ("Plaintiff") Motion for Service of Process (Dkt. No. 3) be granted in part and denied in part; (2) Plaintiff's Motion to Appoint Counsel (Dkt. No. 4) be denied; Plaintiff's Motion to amend his Complaint

be granted (Dkt. No. 9); and (4) certain claims and defendants be dismissed from the Complaint pursuant to the Magistrate Judge's screening capacity under 28 U.S.C. § 1915(e)(2).

The parties were notified of their right to file objections to the Report and Recommendation within fourteen days after receiving it. Plaintiff filed an objection to the Report and Recommendation on May 9, 2012 (Dkt. No. 14). None of the Defendants filed an objection to the Report and Recommendation.

Having reviewed all relevant materials, including the reasoning set forth in the Magistrate Judge's Report and Recommendation, and Plaintiff's Objection to the Report and Recommendation, the court **ADOPTS** the Report and Recommendation and hereby: (1) **DENIES** Plaintiff's Motion to Appoint Counsel (Dkt. No. 4); **GRANTS** Plaintiff's Motion to Amend Complaint (Dkt. No. 9); **GRANTS in part and DENIES in part**, as specified below, Plaintiff's Motion for Service of Process (Dkt. No. 3); and **DISMISSES** certain complaints and defendants from the action for failure to state a claim for which relief can be granted.


Specifically, the Court:

- (1) **DISMISSES** Plaintiff's fourth claim, "Count IV," alleging a violation of *Miranda v. Arizona*, 384 U.S. 436 (1966).
- (2) **DISMISSES** Plaintiff's fifth claim, "Count V," alleging "Civil Rights Violated."
- (3) **DISMISSES** Plaintiff's seventh claim, "Count VII," titled "Resisting Unlawful Arrest."
- (4) **DISMISSES** Plaintiff's attempt to incorporate the Sixth Amendment claim from a case presently before the Court: *Williams et al., v. Weber County, et al.*, (1:11-cv-00021).
- (5) **DISMISSES** Defendants 1-4, Weber County, Craig Dearden, Jan Zogmaister, and Kerry Gibson.

- (6) **DISMISSES** Defendant 5, Dee Smith, Weber County Attorney.
- (7) **DISMISSES** Defendants 1-6, Caitlin Gochnour, Neil Garner, Amy Wicks, Bart Blair, Brandon Stephenson, Doug Stephens, and Susie Von Hooser.
- (8) **DISMISSES** Defendants 13-24 in their official capacities, Timothy Scott, K. Murray, John Doe Officer #1, Terry Thompson, Kevin McCleod, Kevin Burton, R. West, R. Johnson, R. Gates, A. Flatt, Jon Greiner, and Jon Doe Officer #2.
- (9) **DISMISSES** Defendant 25, James Retallick.
- (10) **ORDERS** the remaining Defendants (Defendants 13-24, in their individual capacities) be served with process as to the remaining claims, once the Complaint is appropriately amended.

IT IS SO ORDERED.

DATED this 18th day of July, 2012.


Dee Benson
United States District Judge